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TAMING THE UTILITIES

New York State passes an Energy Consumers' Bill of Rights

Marc Ganz

Have you felt powerless in dealing with the utility corporation that heats or lights up your residence? Threatened by a utility shut-off lately? You may be one of millions of New York utility consumers who benefit from the recently enacted Home Energy Fair Practices Act, commonly known as the Utility Consumers' "Bill of Rights."

Chapter 713 of the 1981 Session Laws codifies, combines, and strengthens the primary consumer protection laws relating to utility service. Consumers are given expanded rights regarding service institution, terminations, budget plans, estimated billing, security deposits, late-payment charges, and other essential utility consumer relations areas.

The legislation was opposed by utility corporations as being unneeded and cumbersome. However, others, notably the Public Utility Law Project, the New York Public Interest Research Group, the New York State Consumer Protection Board, and Attorney General Robert Abrams convinced the New York State Legislature that the present hodge-podge of law and regulations did not provide citizens with adequate legal rights in dealing with utility companies. What emerged from years of negotiations was the first codification of the Public Service Law relating to utility consumer rights and duties. In the process, the New York State Legislature enacted the nation's strongest Utility Consumer Protection Law.

The Law helps consumers in the following ways:

When Applying: Section 31 (1) requires that service be provided "upon the oral or written request of an applicant." Prior to this change, utilities in many instances mandated written applications.

The new application provision is consistent with the law's stated purpose of providing continued heat service to applicants. For instance, Public Assistance and SSI recipients are now assured of receiving essential utility service. The new Public Service Law Section 31 (1)(c) complements the Social Service Law Section 131 (p) (1) by providing that, if a local Department of Social Services guarantees future payments and covers up to four months of a client's bill arrears, service must be continued. The utility company is guaranteed a source of income, since the Social Service Commissioner is mandated to make these utility payments. The Public Assistance recipient is also relieved of the fear

that he or she will be without heat for the winter.

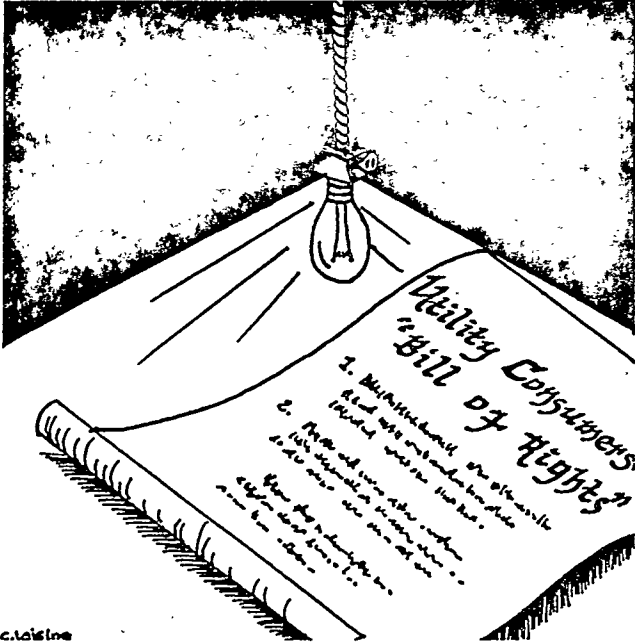
In the case of any application, the utility company must either approve or deny it within three days. If the applicant is denied service, he or she must be provided with written notice of the reasons why the application was denied, what he or she must do to get service restored, and what complaint procedures are available to the aggrieved applicant. The utility company has limited powers to deny a prospective customer service; it must state definitive reasons such as nonpayment of bills within the past twelve months or a theft of service against the utility company. Thus, applicants must now be given due process considerations by the utility company that were not adequately afforded under previous law.

Utility Service Shut-Off: The most important sections of the new law protect citizens against utility service shut-off. Section 32 (2) (a) authorizes a utility to shut off service to a customer only if he or she fails to pay for service actually rendered during the preceding twelve months. The Public Service Commission (PSC), however, is given discretion through its regulations to allow termination, when a bill is more than a year old, in cases involving estimated bill adjustments or when the delay was not the fault of the utility. This regulation is being fought by the Public Utility Law Project, which claims that the proposed rule unfairly favors utility companies. The Albany-based law project has instead proposed a three-month limitation for terminations in the above-mentioned cases.

Consider the case of an individual who received a bill more than twelve months ago and was just sent a notice of a shut-off. He is protected against the shut-off because the

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TAMING THE UTILITIES



new law only authorizes a utility to shut off service as a result of failure to pay for service rendered during the immediately preceding twelve months. However, if it was an adjustment to a previous series of estimated bills, the PSC has allowed shut-offs.

The consumer has many other rights in his or her fight against shut-offs. Prior to terminating service, the utility company must offer a deferred payment plan to the customer and negotiate, in good faith, a fair and equitable deferral of payments. The law limits the down-payment on the deferred payment plan to three months average billings or one-half of the unpaid bills. Moreover, in negotiating a deferred payment agreement, the utility company must take into account the financial circumstances of the customer. The PSC staff is available to counsel the customer and assist in the negotiations.

Thus, if a customer owes \$300 to National Fuel and is threatened with service termination, the utility must offer a deferred payment agreement that takes into consideration that individual's income, expenses, and assets. Additionally, if this customer is on SSI or public assistance, the Department of Social Services will pay some of the old bill. If they do, the utility cannot refuse to provide service.

If the customer believes that the utility has failed to negotiate in good faith or that it employed abusive tactics, he or she has the right to complain to the Public Service Commission. In such cases, the Public Service Commission will tell the utility company to refrain from using such

abusive tactics and it will assist the customer in negotiating a deferred payment agreement while ordering the utility not to shut off the customer's utilities.

There are many other examples of how the new utility consumer's "Bill of Rights" protects citizens from unwarranted shut-offs. If an individual has a medical emergency and gets a certificate from a doctor or local board of health that termination of service or failure to restore service will aggravate an existing medical emergency at the customer's residence, the utility will not be allowed to shut off utility service. If a person is elderly, blind, or disabled, a utility must make a diligent effort to contact, either by telephone or in person, an adult resident of the customer's premises at least seventy-two hours prior to shut-off.

There are special procedures for threatened service shut-offs during cold weather periods. The utility must make a diligent effort to contact, either by telephone or in person, a resident of the customer's premises at least seventy-two hours prior to termination and must make a personal visit at the time of termination to provide the customer with information regarding the protections available under the utility consumer's "Bill of Rights." If a serious impairment to health or safety is likely to result from the service shut-off, the person will have service continued; cases in which the seriousness of the person's medical condition is in doubt will be resolved in favor of the customer.

The only time utilities may shut off service due to non-payment is between 8:00 AM and 4:00 PM, Monday through Thursday, provided that such day or the following day is not a public holiday. (Yet remember that the entire purpose of the new law is to provide for continued heat service rather than to encourage shut-offs.)

There are new protections for residential utility consumers in multiple-dwellings and two-family dwellings with a single heating source. Copies of the notice of shut-off will be posted at the consumers' apartment building or two-family dwelling and thus they will be notified that the landlord did not pay the utility bill. They will be afforded the opportunity to pay the utility bill, thus avoiding shut-off, and will be able to deduct this utility bill from their rent.

Complaint Procedures: There are newly codified sections contained in the new law concerned with procedures for handling complaints. The utility must promptly investigate and report on any complaint about a gas or electric service bill. If the utility consumer is not satisfied with the results of the utility's investigation, he or she may complain to the Public Service Commission. During this time period, the utility will refrain from terminating service for non-payment as long as the complaint is pending before the

CONTINUED ON PAGE 48

TAMING THE UTILITIES

CONTINUED FROM PAGE 40

utility (and for fifteen days thereafter).

Residential Service Deposits: Residential service deposits for most customers are abolished as a condition for utility service. Starting January 1, 1982, no utility corporation shall require a current residential customer to post a security deposit unless that customer is delinquent according to standards set by the Public Service Commission. Deposits held on September 1, 1982, will be returned to the customer.

According to the Public Utility Law Project, the new security deposit section of the utility consumer "Bill of Rights" effectively abolishes security deposits. In addition, no utility will in the future require any Public Assistance or SSI recipient to post a security deposit as a condition of receiving service. If consumers posted a security deposit with the utility company five years ago in the amount of \$100, they will have received 10 percent or more interest annually on this money and will be receiving it back if they have not been delinquent in paying their bills.

The Public Utility Law Project further contends that the new security deposit policy will forbid utility companies from turning off service because the customer did not pay a security deposit. This contention has been disputed by most utility companies, and the Public Service Commission will have to rule in the future on this question. Perhaps the

courts will be the final arbiter.

There are many other provisions contained in the new law that protect the consumer. People will receive informational notices in their utility bills stating that there are new protections under the law. They will be informed that there is an emergency hot-line which a residential customer may use in order to contact commission staff personnel authorized to order re-connection or initiation of residential service. The utility may not charge customers more than 1.5 percent per month for late bills and may not charge any late payment fee for collection efforts, service disconnection, or deferred payment agreements, except as provided in the new law.

In essence, the new law gives consumers standards by which they may assess how to deal with utility companies. At the same time, the new law gives guidelines to utility companies with which they must set their own policies, such as keeping in view the state policy of encouraging continued utility service for customers.

To learn more about the utility consumer "Bill of Rights," consult the local office of the Public Service Commission, Legal Services for the Elderly, Neighborhood Legal Services, the Legal Aid Bureau, or the Public Utility Law Project. Hopefully with consumer education about the new law consumers will be better able to fight their own battles with utility companies and will in the end stand a better chance of prevailing.